

S/N 10/644,703

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Louis A. Pena et al.

Examiner: Ian D. Dang

Serial No.: 10/644,703

Group Art Unit: 1647

Filed: August 19, 2003

Docket No.: 30817-1008

Title: Synthetic Heparin-Binding Factor Analogs

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant has reviewed the Office Action mailed on June 23, 2006. This response is accompanied by a Petition, as well as the appropriate fee, to obtain a one (1)-month extension of the period for responding to the Office Action, thereby moving the deadline for response from 7/23/2006 to 8/23/2006.

Applicants provisionally elect Group II (claims 8-20, and 27-45), with traverse. The Applicants also elect the synthetic peptide analog of Figure 2 designated F2A4 as a species, wherein with reference to Claim 8 the variable X is YRSRKYSSWYVALKR, n is 1, J₁ and J₂ are K (lysine), Y is Hex-Hex-Hex (aminohexanoic acid tripeptide) and Z is RKRKLERAIR.

The Examiner's attention to the application is noted with appreciation.

Applicants provisionally elect Group II (claims 8-20, and 27-45), but traverse the restriction requirement. Traversal of the restriction requirement is addressed with respect to Groups II, V, VI, VII, and VIII. Applicants do not traverse the restriction requirement with respect to Groups I, III and IV.

Restriction is Improper as to Groups II, V, VI, VII, and VIII.

Group V (claim 46) is drawn to a pharmaceutical composition of formula II (Group II) (claims 8-20, and 27-45). Claim 46 necessarily includes all of the elements of Group II (claims

8-20, and 27-45). Therefore, a search of Group V would not create an undue burden on the Examiner.

Group VI (claims 47-50) is drawn to a method of treating a mammal for radiation exposure using the compound of Group II (claims 8-20, and 27-45). Group VII (claims 51-53) is drawn to a method for stimulating growth factor receptor signaling in a cell using the compound of Group II (claims 8-20, and 27-45). Group VIII (claims 54-59) is drawn to a method for delivering the compound of Group II (claims 8-20, and 27-45) using a coated medical device.

In the Office Action, it is asserted that the inventions of Group I-V are “independent and distinct” because they are products, which possess characteristic differences in structures and functions. However Group V is for a pharmaceutical composition of Group II (claims 8-20 and 27-45) and necessarily includes all of the elements of Group II claims

Applicants initially note that each and every one of the groups is shown as classified in the same class (514) and the same subclass (12+). Given that each of the inventions is asserted to be in the same class and subclass, it is submitted that the second criteria under MPEP § 803 is not met, and that no serious burden is demonstrated requiring restriction.

Claims Readable on the Elected Species. As set forth above, Applicants have elected the species of compound of Figure 2. The species of Figure 2 is one of many species described and representative of the genus represented by Group II claims having formula II. Given that the representative number of species in the genus is large, the Examiner should allow the genus claim. With respect to the invention of Group II (claims 8-20 and 27-45), it is submitted that at least claims 46-59 read on such species and genus (Groups V, VI, VII, and VIII).

Reconsideration of the restriction requirement is respectfully requested for the reasons given above.

Consideration and allowance of the application are respectfully requested. Furthermore, when a claim generic to all species is deemed allowable, the Examiner is requested to consider and allow the claims initially withdrawn from consideration.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (505 998 6134) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4213

Respectfully submitted,



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